IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.754 of 2000

Gandhimathi .. Appellant/Complainant

vs.

1.Arumuga Thevar
2.Ambigapathy
3.Ilangovan
4.Srinivasan
5.Durai
6.Iyyappan
7.Mathi
8.Asokan .. Respondents/Accused

Prayer: This appeal has been preferred against Judgment dated 14.12.1999, in C.C.No.167 of 1999 on the file of the Judicial Magistrate, Tiruthuraipoodi.

For Appellant : Mr.K.Srinivasan
For Respondent : Mr.M.Vijaya Kumaran

JUDGMENT

This appeal has been preferred against Judgment in C.C.No.167 of 1999 on the file of the Court of Judicial Magistrate Thiruthuraipoodi. The appellant is the complainant.

2. The short facts in the private complaint preferred by the complainant before the Judicial Magistrate is that on 10.7.1993 when the complainant was alone in her house due to previous enmity the accused formed themselves into an unlawful assembly carrying deadly weapons, attacked the complainant with stick, aruval and iron rod causing simple as well as grievous injuries all over her body and also criminally intimidated her.

3. The complainant preferred by the complainant with the police was registered under Cr.No.253/1983 of Tiruthuraipoodi police station. Since the police have referred the case as mistake of fact the complainant has preferred the complainant before the Judicial Magistrate as per section 200 of Cr.P.C. After taking

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cognizance of the offence, the learned Judicial Magistrate has taken the case on file as C.C.No.167/1999.

4. On appearance of the accused on summons copies under Section 207 of Cr.P.C were furnished to the accused and charges under Section 147, 148, 323, 326, 341 and 506(II) IPC were framed and when questioned the accused pleaded not guilty. On the side of the complainant P.W.1 to P.W.6 were examined and Ex.P.1 to Ex.P.4 were marked.

5. P.W.1-Gandhimathi, the complainant would depose that on 10.07.1983 at about 7.00 am all the accused had trespassed into her land and meddle with her fence and when this was questioned by her the accused assaulted her with stick, iron rod and aruval. According to her, A1-Arumugadevar bet her with stick on her back, A3 bet her on the shoulders and also on the left hand and that she had also bitten A3 as counter attack and A2 had assaulted her (P.W.1's) son Muruganatham with iron rod and due to the impact the victim had lost one tooth, and A4 had assaulted her(P.W.1) on the right leg and knee with stick, and A7 assaulted P.W.5-Vijayalakshmi on the back and hip, and A3 assaulted Vijayalakshmi(P.W.5) on the left wrist with a stick, and A8 had caused cut injury with an arruval on the left wrist of her daughter Janaki(P.W.3), and A6 had assaulted P.W.4-Thamizhselvan with a stick on his hip, and A5 has caused simple injuries with pen knife on the left wrist and right shoulder of Dravidamani, and A5 had also attempted Dravidamani with a stick on the left hand of Dravidamani causing simple injury. On her(P.W.1) distress call, the accused ran away from the place of occurrence and that she preferred a complaint with Thiruthuraipoodi police who have referred her to the Government Hospital for treatment and that her son Muruganadam was in hospital as inpatient for nearly one week and the police have referred the case without proper investigation and Ex.P.2 is the referred notice of the police and that there was a civil suit between her and the accused before the District Munsif, Thiruthuraipoondi in O.S.No.138/1987, which was disposed of. P.W.1 would admit that police have registered a case against her under Section 160 IPC as STC.1269/1983. Ex.P.3 is the charge sheet filed by the Thiruthuraipoondi police in STC.No.1269/1983. Ex.P.4 is the copy of the complaint preferred by her to the higher police officials.

6. P.W.2 Muruganadam is an injured witness. He has also corroborated the evidence of P.W.1 who is his mother. He would depose that A2 had assaulted him at the time of occurrence with an iron rod resulting fall of one tooth and A4 had assaulted him with stick on the right knee. He would further said that A2 trespassed into the house and committed theft of Rs.500/-. He also speaks about the overtact of the oher accused.

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7. P.W.3 has also corroborated the evidence of P.W.1 & P.W.2. She would depose that A8 had caused cut injury with an aruval on below her wrist. She would also state that A2 criminally trespassed into her house and committed theft of Rs.500/- and that she was referred to Government Hospital, Thiruthuraipoondi, for treatment by the police after the complaint preferred by P.W.1 her mother.

8.P.w.4-Thamizhselvan has also corroborated the evidence of P.w.1 to P.W.3 and also speaks about the overtact of the accused and according to P.W.4 the cut aimed at his sister Janaki (P.W.3) by Ashokan (A8) fell on his left hand and that he had sustained simple injury. Even according to P.W.4, A2 trespassed into the house of P.W.1 and committed theft of Rs.500/- and also some of the documents.

9. P.W.5-Vijayalakshmi is the daughter-in-law of P.W.1, who has also corroborated the evidence of prosecution witnesses. According to her A3 had attacked her with a stick on the left arm and A7 had assaulted her with a bamboo stick on the hip and back. P.W.5 has also speaks about the overtact against the other accused.

10. When incriminating circumstances were put to the accused under Section 313 of Cr.P.c. the accused denied their complicity with the crime. After going through the oral and documentary evidence, the learned Judicial Magistrate has come to the conclusion that the guilt against the accused has been proved beyond any reasonable doubt and accordingly acquitted the accused from all the charges levelled against them. Hence, the appeal by the complainant.

11. Now the point for determination in this appeal is whether the judgment of the learned Judicial Magistrate in C.C.No.167/1999 is perverse to warrant interference from this Court?

12. The Point:-

12(a) This is an appeal against the acquittal. Under such circumstance, we have to see whether the ground, on which the learned Judicial Magistrate has based his findings for acquittal, is perverse in nature. The first point under which the learned Judicial Magistrate has acquitted the accused is that there was an inordinate delay on the part of the complainant to prefer private complaint before the judicial magistrate after referred notice given by the police under Ex.P.1. The referred notice is dated 31.7.1983. The occurrence had taken place on 10.07.1983. But the private complaint was preferred by the complainant on 27.1.1984. There is no explanation forthcomming from the complainant for this inordinate delay.

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12(b) Accordingly to the prosecution witnesses P.W.1 to P.W.4 the accused have attacked them with stick, iron rod and arruval. P.W.1 in her evidence has stated that at the time when she prefer the police complainant the police referred her to Government Hospital at Thiruthuraipoondi for treatment and her son Muruganadam was admitted in the Government Hospital at Thiruthuraipoondi as an inpatient for nearly ten days. But it is curious to note that no Government Doctor was examined on the side of the complainant and no wound certificate or copy of accident register was filed to show that after the occurrence the injured witnesses have been treated by a government Doctor or a private doctor. So the injuries spoken to by the prosecution witnesses are not corroborated by medical evidence. Further as rightly observed by the learned trial judge there is no specific overtact attributed against each of the accused in the private complainant preferred by the complainant.

12(c) It is seen from the evidence of P.W.1 that there is a civil dispute pending before a civil Court between the complainant and the accused and that there was criminal case under Section 160 IPC was registered against the complainant herself in STC.No.1269/1983. The unexplained inordinate delay in preferring the private complaint in my opinion is fatal to the case of the complainant as rightly held by the trial Judge. I do not fined any reason to interfere with the findings of the learned trial Judge in C.C.No.167/1999 on the file of the Court of Judicial Magistrate, Thiruthuraipoondi, which is neither illegal nor infirm to warrant any interference from this Court. Point is answered accordingly.

13. In the result, the appeal is dismissed confirming the judgment in C.C.No.167/1999 on the file of the Judicial Magistrate, Thiruthraipoondi.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,

1. The Judicial Magistrate,
Thiruthraipoondi.

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2. Do Thro The Chief Judicial Magistrate,
Thanjavur.

1 cc to Mr.K.Srinivasan, Advocate, sR. 14342

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KSJ (CO)
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